IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6705 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NILESHBHAI NATVARLAL KOTAK - Petitioner(s)

Versus

MANAGING DIRECTOR & 1 - Respondent(s)

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Appearance :

MR PJ YAGNIK for Petitioner(s) : 1,
MS MEGHA JANI for Respondent(s) : 1,
MR DEVANG D TRIVEDI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/02/2006

ORAL JUDGMENT

1.Ms. Megha Jani, learned advocate has submitted that she is not appearing in the matter on behalf of the respondent No.1 and Shri Devang Trivedi, learned

advocate appears on behalf of the respondents. Office is directed not to show the name of Ms. Megha Jani, learned advocate appearing on behalf of the respondent No.1.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order directing the respondent not to hold public auction on 2.9.1999 of land bearing Survey No.10, Plot No.20 admeasuring 631.72 sq.mtrs., situated at Meghapur Village Industrial Area, Taluka Lalpur, District: Jamnagar.

3. It is the case on behalf of the petitioner that the petitioner had offered for purchasing the property i.e the land, building and the plant and machinery of the unit which was earlier known as M/s. Kavita Brass Industries, Meghpur, Taluka Lalpur, District Jamnagar and the said sale was conducted by the GSFC. It is the case on behalf of the petitioner that the GSFC had earlier given loan to M/s. Kavita Brass Industries which failed to repay the amount to the GSFC and the GSFC in exercise of the powers conferred upon the corporation under Section 29 of the State Financial

Corporation Act; 1951 accepted the offer of the petitioner for purchasing the property in question on certain terms and conditions and the price offered by the petitioner was Rs.2,31,000/-. It is the case on behalf of the petitioner that the petitioner had already paid Rs.80,850/- earlier but the petitioner came to know that as per the extract of Village Form, the unit continued to be in the name of the borrower and belonged to the original borrower and the title was not clear and therefore, the petitioner did not pay the balance amount of sale consideration and though the petitioner was ready and willing to pay the balance amount of the sale price provided that the title of the property in question was made clear and marketable in the name of the petitioner and on account of the aforesaid dispute, the petitioner did not pay the balance amount of sale price and inspite of that the GSFC announced public auction for the sale of the property in question and therefore, the petitioner has preferred the present Special Civil Application.

4. The present Special Civil Application came up for the hearing before the learned Single Judge of this Court on 12th September, 2000 and the learned Single Judge of

this Court (Coram: Hon'ble Mr. Justice M.S.Shah, J.) while admitting the present Special Civil Application, passed the following interim order :-

(1)"The balance amount of Rs.60,850/-shall be paid by the petitioner to the respondent in six equal monthly installments of Rs.11,000/- each. The first installment shall be paid on or before 10th October, 2000 and subsequent installments shall be paid on 10th day of each succeeding month so as to clear the entire dues by 10th March, 2001.

(2)As and when the petitioner pays the first installment as aforesaid, the respondent-Corporation shall hand over the possession of the Land and Factory in question to the petitioner within one week from the date of receipt of the first installment.

(3)As far as the amount of interest and penalty is concerned, the petitioner shall make a representation to the respondent – Corporation for waiving/reducing the rate of interest.

(4)Such an application shall be made on or before 15th October, 2000 and the respondent – Corporation shall decide such an application within 2 (two) months from the date of receipt of the application.

(5)In case the petitioner commits any default, it will be open to the respondent-Corporation to move this Court for vacating the interim stay.

(6)Subject to the aforesaid conditions, the ad-interim relief granted earlier shall continue till further orders."

5.Today, when the matter is called out for final hearing, Shri Trivedi, learned advocate appearing on behalf of the respondent – Corporation has submitted that after the interim order dated 12th September, 2000, the petitioner has not paid any amount and/or installment and the petitioner has not complied with the directions issued by this Court while granting interim order and the interim order was conditional interim order. He has also further submitted that even the petitioner has not approached the Corporation for waiving/reducing the rate of interest.

6.In view of the fact that the petitioner has not complied with the interim order passed by this Court and as it was the conditional interim order and considering the fact that the petitioner has not paid

the full consideration and therefore, when the property is put to public auction by the respondents, it cannot be said that the said action is in any way illegal and/or arbitrary and/or dehors the law. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed. As and when the property is put to public auction, the respondents are directed to give opportunity to the petitioner in accordance with law and to give opportunity to the petitioner to pay the amount as per the highest offer received in public auction.

7. With these observation and directions, the present Special Civil Application is dismissed. Rule is discharged, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.